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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

[REDACTED]

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 27, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by an agent of the Wisconsin Department of Health Services' Division of Long Term Care, Bureau of Long-Term Support (BLTS or Bureau), in regard to IRIS benefits, a hearing was held on October 14, 2015, by telephone. A hearing set for September 9, 2015 was rescheduled at the petitioner's request.

The issue for determination is whether the Department's agent correctly denied the petitioner's IRIS application, due to previous involuntary IRIS disenrollment.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

Attorney Matthew V. Hayes  
230 West Wells, Suite 800  
Milwaukee, WI 53203

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED] Quality Serv. Spec.  
TMG-IRIS Consulting Agency  
Madison, WI 53703

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

- [REDACTED]
2. The petitioner is financially eligible for the IRIS program, and was previously enrolled in the program for several years, dating from at least 2010. IRIS is a self-directed personal care program, created by a Medicaid waiver approval.
  3. The petitioner, age [REDACTED], is physically disabled and resides with his wife in their home in the community. He has diagnoses of COPD, chronic pain, complex partial seizures, diabetes, a visual impairment, neuropathy and abnormality of gait. The petitioner requires hands-on assistance with most activities of daily living (ADLs), such as bathing, dressing, toileting, in-home mobility, and transferring. He is independent in eating, communication, medication management, money management, and use of the telephone.
  4. Since 2010, the IRIS agency was aware of continuing problems between the petitioner and his caregivers concerning the payment process for the caregivers. Specifically, the petitioner demanded that the caregivers' paychecks be sent directly to him instead of to the caregivers. The caregivers then reported that the petitioner withheld pay after he received their checks, and that he reported false hours of provided services.
  5. In January 2015, the petitioner reported to the IRIS agency that he fired caregiver LM. Nonetheless, on March 3 he filed a time report declaring that LM had worked for him every day in February 2015. As a result, a check for LM was issued to the petitioner, signed by LM, and cashed. In late March, the petitioner signed a form stating that he had terminated LM in January, and also complained that LM had stolen the February payment check. This caused the agency to evaluate his case for intentional mismanagement of funds.
  6. The IRIS agency notified the petitioner that he would be dis-enrolled from IRIS effective April 18, 2015 for "mismanaging his purchasing/employment authority with intent." The petitioner appealed from that notice. A hearing was held before Administrative Law Judge Schneider of this office, and he issued a Decision on May 27, 2015. Findings #4 and #5 above are based on Judge Schneider's Findings. A reading of the Discussion section of that Judge's decision leaves no doubt that he did not believe the petitioner. He finishes with this language:

It is evident that petitioner intentionally falsified the February work report. Together with the long history of problems with care givers, the agency reasonably determined that petitioner should not be in charge of his care plan. ...

Finally, Judge Schneider's Conclusion of Law was as follows: "The IRIS agency correctly sought to terminate petitioner's eligibility based upon mismanagement of his purchasing/employer authority." *See*, DHA Decision No. [REDACTED] (Wis. Div. of Hearings & Appeals May 27, 2015)(DHS).

7. Wasting no time, the petitioner applied for re-enrollment into the IRIS program in May 2015. On June 15, 2015, the IRIS agency issued written notice to the petitioner advising that his request for IRIS re-enrollment was denied. The notice further advised the petitioner that his request was denied because "...DHS... reserves the right to deny enrollment of potential IRIS participants during the referral stage for previous involuntary disenrollment from IRIS or another long-term care program for substantiated fraud."
8. The petitioner previously engaged in substantiated fraud against the IRIS program in 2015. The petitioner's testimony to the contrary was not credible.

## **DISCUSSION**

The petitioner argues that he previously merely mismanaged IRIS funds, as opposed to having engaged in "substantiated fraud" with those funds. Because he argues that he merely mismanaged funds, he further asserts that he should be allowed to re-enroll in the IRIS program.

[REDACTED]

The Include, Respect, I Self-Direct (IRIS) program was developed pursuant to a Medical Assistance waiver obtained by the State of Wisconsin, pursuant to section 6087 of the Deficit Reduction Act of 2005 (DRA), and section 1915(j) of the Social Security Act. This Section 1915(c) waiver document is available at <http://www.cms.gov/MedicaidStWaivProgDemoPGI/MWDL/list.asp>. IRIS is a fee-for-service, self-directed personal care program.

The federal government has promulgated 42 C.F.R. §441.450 - .484 to provide general guidance for this program. Those regulations require that the Department's agent must assess the participant's needs and preferences, and then develop a service plan based on the assessed needs. *Id.*, §441.466. Further, "all of the State's applicable policies and procedures associated with service plan development must be carried out ..." *Id.* §441.468.

Both the federal Medicaid waiver statute and the pertinent federal rule require the Department to assure that correct records are kept to assure that these public funds can be accounted for:

**§ 441.302 State assurances.**

Unless the Medicaid agency provides the following satisfactory assurances to CMS, CMS will not grant a waiver under this subpart and may terminate a waiver already granted:

(a) *Health and Welfare*—Assurance that necessary safeguards have been taken to protect the health and welfare of the recipients of the services. ...

(b) *Financial accountability*— The agency will assure financial accountability for funds expended for home and community-based services, provide for an independent audit of its waiver program (except as CMS may otherwise specify for particular waivers), and it will maintain and make available to HHS, the Comptroller General, or other designees, appropriate financial records documenting the cost of services provided under the waiver, including reports of any independent audits conducted.

42 C.F.R. § 441.302.

In keeping with the above demand for financial accountability, the federal waiver document referenced in the first paragraph clearly allows for involuntary participant disenrollment for "mere" mismanagement of purchasing authority:

**Involuntary Termination of Participant Direction.** Specify the circumstances when the State will involuntarily terminate the use of participant direction and require the participant to receive provider-managed services instead, including how continuity of services and participant health and welfare is assured during the transition:

The criteria for involuntary disenrollment from the IRIS waiver include: 1) the participant's health and safety is jeopardized; 2) purchasing authority is mismanaged; or 3) the enrollee refuses to report information necessary to adequately monitor the supports and services per his or her ISSP. The decision to involuntarily disenroll a participant from the IRIS waiver remains under the direct authority of the SMA and participants are properly notified of their Fair Hearing rights.

*Waiver WI.0485.R01.00*, Appendix E-1: Overview (12 of 13). Note that the waiver document does not specifically require substantiated fraud for disenrollment, just purchasing authority mismanagement.

The Department's IRIS policies allow the program to end a participant's enrollment when the program substantiates mismanagement of employer authority. The Department's IRIS policy document, *IRIS*

Policy Manual (Manual) available at <https://www.dhs.wisconsin.gov/publications/p0/p00708a.pdf> (viewed in November 2015), also calls for denial upon re-application for previous disenrollment for substantiated financial fraud:

1. The ...DHS... reserves the right to deny enrollment of potential IRIS participants during the referral stage for the following reasons:

...

3. “Previous involuntary disenrollment from IRIS or another long term care program for substantiated fraud” is defined as being disenrolled involuntarily from IRIS, Family Care, or any other long-term care program for substantiated fraud. Suspected fraud or abuse of Medicaid funds are not sufficient grounds to deny enrollment of an individual in the IRIS program. Individuals seeking re-enrollment who committed abuse of Medicaid funds or were suspected of fraud during a previous enrollment in IRIS or another long-term care program may expect to receive additional education on fraud prevention and monitoring of expenditures upon re-enrollment.

*Manual*, § 3.3A.1.

The petitioner argues that Judge Schneider’s decision only found that the petitioner mismanaged IRIS funds, not that he engaged in substantiated fraud. He bases this on the wording of that Judge’s Conclusion of Law. However, a reading of that Judge’s entire decision shows that the Judge clearly believed the petitioner engaged in fraud, and that the agency substantiated its suspicion of fraud with respect to the payment for February 2015 caregiver services. After reading Judge Schneider’s decision, I too believe that the agency substantiated fraud by the petitioner for that episode.

The petitioner also argues that the agency should have re-enrolled him and then given him additional education on fraud prevention. First, the agency did not have to re-enroll him because he engaged in substantiated fraud. Second, the petitioner was given extra IRIS education on March 11, 2015, which he followed by making a false allegation of check theft on March 25. Third, although not *substantiated* fraud, there is a long string of caregiver complaints about the petitioner’s payment practices. In every year that he has been on this program, a least one employee made a complaint to the agency about his actions. *E.g.*, in 2010, employee YJ complained that the petitioner would not give her a paycheck and that he asked her to sign blank timesheets. In 2012, employee CB complained that the petitioner cashed her paycheck and only gave her half of the total.

The agency’s decision to deny re-enrollment is justified. The petitioner is a crook; if not a crook, he is too deficient in basic paperwork management to benefit from further instruction. This denial does not prevent the petitioner from seeking assistance through the Family Care program, which has more financial oversight (the Family Care agency handles service payments). The Family Care program can provide the petitioner with the personal care worker services that he undoubtedly needs. Wis. Admin. Code § DHS 10.41(2), Note. The petitioner asserted that the Family Care program will not accept him because of the IRIS mismanagement finding. However, I can find nothing in the Family Care rule that bars enrollment into that program for that reason. *Id.*, §§ 10.32 - .36. The petitioner should apply for Family Care and, if denied, appeal. *Id.*, § 10.55(1).

### **CONCLUSIONS OF LAW**

1. The petitioner previously engaged in substantiated fraud against the IRIS program in 2015.
2. The Department’s agent correctly denied the petitioner’s request for re-enrollment into the IRIS program.

THEREFORE, it is

**ORDERED**

That the petition is dismissed.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

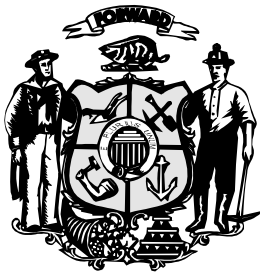
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 18th day of November, 2015

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\sNancy J. Gagnon  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on November 18, 2015.

Bureau of Long-Term Support  
Attorney Matthew Hayes